

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**  
AUG - 5 2011  
Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

PUBLIC EMPLOYEES FOR ENVIRONMENTAL )  
RESPONSIBILITY, )  
2000 P Street, NW Suite 240 )  
Washington, D.C. 20036 )

Plaintiff, )

v. )

U.S. DEPARTMENT OF THE INTERIOR )  
OFFICE OF INSPECTOR GENERAL )  
1849 C Street, NW )  
MS-4428 )  
Washington, D.C. 20240 )

Defendant. )

Case: 1:11-cv-01418  
Assigned To : Roberts, Richard W.  
Assign. Date : 8/5/2011  
Description: FOIA/Privacy Act

**COMPLAINT**

**PRELIMINARY STATEMENT**

1. This action is brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.*, as amended, in order to compel the U.S. Department of the Interior (DOI) to disclose records withheld wrongfully after a FOIA request and subsequent appeal from Plaintiff. FOIA requires that federal agencies respond to public requests for documents, including files maintained electronically, in order to increase public understanding of the workings of government and access to government information.
2. Plaintiff Public Employees for Environmental Responsibility (PEER) is a non-profit organization with tax-exempt status dedicated to research and public education concerning the activities and operations of the federal government. Plaintiff requested the

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subject records in order to learn about an investigation concerning the death of former Carrizo Plain Monument Manager Marlene A. Braun.

3. On October 8, 2010, plaintiff submitted a Freedom of Information Act request to the DOI Office of Inspector General (OIG) requesting records relating to an investigation concerning the death of former Carrizo Plain Monument Manager Marlene A. Braun. On February 24, 2011, OIG responded to plaintiff's request, providing some of the requested information, withholding other information, claiming exemptions under 5 U.S.C. §§ 552 (b)(5), (b)(6), and (b)(7)(C), and referring Seventy-two documents to the Bureau of Land Management (BLM). On March 23, 2011, plaintiff appealed OIG's decision in response to its FOIA claim. On May 2, 2011, the Office of the Solicitor granted in part and denied in part Plaintiff's appeal. On May 23, 2011, the Office of the Solicitor provided copies of the some of the documents OIG originally withheld. On May 24, 2011, DOI acknowledged that the BLM had not responded to the Plaintiff's FOIA request and attributed the delay to personnel changes in the BLM's California State Office.
4. DOI's conduct is arbitrary and capricious and amounts to a denial of Plaintiff's FOIA request. DOI's conduct frustrates Plaintiff's efforts to educate the public regarding ongoing activities at DOI and is a violation of the FOIA.
5. Plaintiff seeks a court order requiring DOI to produce immediately the documents sought in the October 8, 2011 FOIA request, as well as other appropriate relief.

**JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).
7. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
8. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2412 and 5 U.S.C. § 552(a)(4)(E).
9. Venue is properly vested in this Court under 28 U.S.C. § 1391(e), because the Defendant resides in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district. Venue is also proper under 5 U.S.C. § 552(a)(4)(B).

**PARTIES**

10. Plaintiff PEER is a non-profit public interest organization, with its main office located Washington, D.C., and field offices located in California, Florida, Massachusetts, Colorado, New Jersey, Arizona and Tennessee.
11. PEER is not a commercial enterprise for purposes of the fee waiver provisions of FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Among other public interest projects, PEER engages in advocacy, research, education, and litigation relating to the promotion of public understanding and debate concerning key current public policy issues, focusing on the environment, public lands and natural resource management, public funding of environmental and natural resource agencies, and ethics in government.

12. Informing the public about these important public policy issues is central to PEER's mission. PEER educates and informs the public through news releases to the media, PEER's web site [www.peer.org](http://www.peer.org), which draws between 1,000 and 10,000 viewers per day, and PEER's newsletter which has a circulation of approximately 20,000, including 1,500 environmental journalists.
13. Defendant DOI is an agency of the United States as defined by 5 U.S.C. § 552(f)(1), and is charged with the duty to provide public access to documents in its possession consistent with the requirements of the FOIA and is denying Plaintiff access to its records in contravention of federal law.

### **FACTS**

14. On October 8, 2010, Plaintiff filed a FOIA request to the OIG requesting records relating to its April 19, 2006 "Report of Investigation" concerning the death of former Carrizo Plain Monument Manager, Marlene A. Braun. Specifically, Plaintiff requested copies of all 81 attachments to the April 19, 2006 Report of Investigation.
15. OIG acknowledged receipt of Plaintiff's FOIA request in a letter dated October 20, 2010 and granted Plaintiff's fee waiver request. In the same letter, OIG stated that it could not respond within FOIA-mandated time limits, *see* 5 U.S.C. § 552(a)(6)(A)(i), due to a backlog of requests and other unforeseen circumstances.
16. On November 10, 2010, OIG sent a letter to BLM informing them that OIG received a FOIA request from Plaintiff requesting all information regarding the death of former Carrizo Plain Monument Manager Marlene A. Braun, that OIG identified BLM

documents in their investigative case files, and that they are forwarding the information to BLM with a copy of the request for BLM's review and direct response to Plaintiff.

17. In a letter dated November 18, 2010, BLM acknowledged receipt of OIG's referral and informed Plaintiff that its request had been referred to BLM's California State Office.
18. OIG responded to Plaintiff's October 8, 2010 FOIA request in a letter dated February 24, 2011. In this letter, the OIG informed Plaintiff that they located all eighty-one of the requested attachments. They withheld eight OIG investigative Activity Reports (IAR)'s and one memorandum from BLM to OIG in their entirety, released one IAR (subject to redactions), and referred the seventy-two remaining documents to BLM. OIG claimed the withheld documents were exempt from release under 5 U.S.C. §§ 552 (b)(5), (b)(6), and (b)(7)(C) and 5 U.S.C. § 552 a(k)(2).
19. Plaintiff appealed OIG's response to Plaintiff's October 8, 2010 FOIA request on March 23, 2011. Plaintiff asserted 1) the referral of documents to the BLM was a stall tactic and constructive denial of Plaintiff's request; 2) the OIG did not adequately explain why its basis for nondisclosure applies to these particular documents; 3) the OIG failed to show that the documents are protected from disclosure by FOIA exemptions (5), (6), and (7)(C) and the Privacy Act; and 4) the OIG did not properly segregate and release non-exempt information from the documents.
20. DOI did not send an acknowledgement, respond to, or provide the requested documents under Plaintiff's March 23, 2011 appeal in the statutory time required.
21. In a letter dated May 2, 2011, DOI Office of the Solicitor responded to Plaintiff's appeal, granting it in part and denying it in part.

22. The Office of the Solicitor denied the following claims in Plaintiff's appeal: Plaintiff's challenge of OIG's referral of documents to BLM; Plaintiff's challenge of OIG's refusal to provide an index of the withheld documents; Plaintiff's challenge to OIG's exemption (5) claims; and Plaintiff's challenge to OIG's claim under exemption (6) and (7)(C) regarding names and other personal identifying information of employees and other individuals who were interviewed in connection with OIG's investigation and the documents that detail the contents of Ms. Braun's suicide note and the descriptions given of her body at the scene of the incident.
23. The Office of the Solicitor granted the following claims in Plaintiff's appeal: Plaintiff's challenge of OIG's reliance on Privacy Act exemption (k)(2) and Plaintiff's assertion that OIG improperly segregated and did not release non-exempt information from the documents.
24. In a letter dated May 23, 2011, the Office of the Solicitor released copies of the documents that the Office of the Solicitor found to be improperly withheld. These documents were redacted to protect information the Office of the Solicitor claimed to be subject to FOIA exemptions (5), (6), and (7)(C).
25. Plaintiff does not challenge the Office of the Solicitor's findings regarding FOIA exemption (5) as applied to the documents produced May 23, 2011.
26. In a letter dated May 24, 2011, the Office of the Solicitor acknowledged that Plaintiff had not received a response regarding the records referred to BLM and stated that BLM has been directed to respond "within twenty workdays of this letter."

27. It has been nine months since Plaintiff initiated the October 8, 2010 FOIA request and four months since Plaintiff appealed on March 23, 2011. To date, neither OIG nor BLM has responded to the Plaintiff's FOIA request regarding the records referred to BLM. In doing so, DOI has failed to meet the twenty (20) day limit imposed by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(ii).
28. Plaintiff has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C) for its FOIA request, and now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.

### **CAUSES OF ACTION**

#### **Count I: Violation of the Freedom of Information Act**

Plaintiff repeats the allegations in paragraphs 1 through 28.

29. Plaintiff would draw attention to the January 21, 2009 memo by President Barack Obama declaring the following policy: "The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA."
30. DOI's failure to disclose the requested documents referred to BLM is a violation of FOIA, 5 U.S.C. § 552, and the agency's own regulations promulgated thereunder.

31. DOI failed to show that personal privacy rights outweighed disclosure as required by exemptions (6) and (7)(C). Therefore the redaction of the names of state level director or above from the IARs constitutes an improper withholding under FOIA.

**Count II: Violation of the Administrative Procedure Act**

32. Plaintiff repeats the allegations in paragraphs 1 through 28.
33. DOI's failure to respond to Plaintiff's request for records referred to BLM as well as the improper redaction of information from the IARs constitutes an agency action of unlawful withholding and unreasonably delay, in violation of the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706. DOI's failure in this matter is arbitrary, capricious, an abuse of discretion, not in accordance with the law and without observance of procedure required by law, all in violation of the APA.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests and prays that this Court:

- i. Enter an Order declaring that DOI has wrongfully withheld the requested agency records;
- ii. Issue a permanent injunction directing DOI to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until DOI is in compliance with FOIA, APA and every order of this Court;
- iv. Enter an Order declaring that Plaintiff is entitled to a full fee waiver under 5 U.S.C. § 552 (a)(4)(A)(iii) for Plaintiff's FOIA request to the extent that DOI does not provide a full fee waiver for both of Plaintiff's requests;



- v. Award Plaintiff its attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- vi. Grant such additional and further relief to which Plaintiff may be entitled.

Dated: August 5, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kathryn Douglass', written over a horizontal line.

Kathryn Douglass, D.C. Bar # 995841

Staff Counsel

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